

Welcome to the first issue of CSE NEWS – “News for Organisations with a Purpose”.

The landscape of this sector is changing rapidly. 2006 saw the most significant legislative changes to the way in which charity is defined in law for 400 years; latest Charity Commission figures estimate that registered charities have an annual income of £36 billion; charities are working in more areas and with more diverse groups of people than ever before; within the last two years a new legal form has been created specifically for social enterprises and the Charitable Incorporated Organisation will be another option for charities within the next couple of years; the government is increasingly recognising the part that charities play in civil society today.

Amidst this constant change, for charity trustees and senior employees the task of staying on top of changing law and best practice without losing sight of the purposes for which their organisation exists can be daunting.

This newsletter is intended to assist charity personnel in staying up-to-date with relevant developments, to enable you to avoid pitfalls and focus your attention on the task of running your organisation. Our intention is to deal with a range of issues, but for this first edition we have decided

to focus on the debate surrounding the changes made to the legal definition of charity as introduced by the Charities Act 2006.

If you would prefer to receive this update by e-mail, or have any other comments, please contact me:

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For the Public Benefit

The Charities Act 2006 introduces some significant changes to the way in which charity is defined at law in England and Wales. Part 1 of the Act contains a list of 13 purposes considered to be charitable and gone are the four “heads of charity” (the advancement of religion or education, the relief of poverty, or other purposes beneficial to the community) into which all charitable purposes had to fall directly or by analogy to be considered charitable. An organisation’s purposes must fall within the new list of descriptions or be analogous to a purpose in the list or a purpose considered charitable by analogy to the list. In addition, a purpose must be for the public benefit in order to be a charitable purpose. The term “public benefit” is to be understood in the light of previous case law, and it will no longer be presumed that any purpose can demonstrate benefit to the public.

Charity Commission Guidance

Under the new legislation, the Charity Commission are given a public benefit objective to promote awareness and understanding of the operation of the new requirement, and tasked with publishing draft guidance on the scope of the test and consulting with the public before issuing the guidance in final form. The draft guidance was issued for consultation in March 2007, and the consultation will close on 6th June 2007. The purpose of the draft is to set out the Charity Commission’s approach to the implementation of this test, and it is available at:
www.charitycommission.gov.uk/news/pbnewsindex.asp.

Once issued in final form this guidance will, in effect, have the status of legislation as trustees have a statutory duty to have regard to it when exercising any powers

or duties to which the guidance is relevant. It is important that individuals involved with charities appreciate this fact, and feed back any concerns that they have about the guidance to the Charity Commission before they are bound to have regard to it by law.

Further Consultation to Follow

The draft guidance opens with some information about the nature and form of the consultation, including a helpful list of questions that the Charity Commission wishes to pose about the guidance. The production of this draft is the first part of a long process of consultation. Further documents setting out the Commission’s approach to the application of the public benefit test to specific types of charity will follow later in the year. These will initially deal with types of charity where there is a greater risk that they will not be able to prove that the carrying out of their

purposes benefits the public, or where there has been significant public interest in the effect of the public benefit test on their operation. The first groups to be reviewed are charities for the prevention and relief of poverty, charities for the advancement of education and of religion, and fee-charging charities. If you are interested in following the progress of the debate you can sign up to be informed when the relevant consultation is issued (for details see sections 2.5 and 2.12 of the draft guidance). It should be noted that responses to the consultation may be made public unless parties request confidentiality.

Content

The summary states that an organisation's purposes must be for the public benefit in order to be charitable. To assess this the Charity Commission may take account of both the organisation's activities and the potential consequences of an organisation pursuing a particular purpose.

The guidance identifies four principles of public benefit. These are:

1. There must be an identifiable benefit
2. Benefit must be to the public, or a section of the public
3. People on low incomes must be able to benefit
4. Any private benefit must be incidental

Each of these principles is unpacked, and a list of questions to be used in assessing public benefit are identified. When demonstrating identifiable benefit, where there is any doubt this will have to be proved with evidence, and the benefit of each stated object of the charity must be shown. The Commission will take account of both direct and indirect benefits, but make it clear that demonstrating relief of public funds (i.e. the relief to the public purse of patients being treated in a private hospital who would otherwise be treated on the NHS) will not be enough in itself to prove public benefit. In addition, no account will be taken of benefits provided by the charity that are not directly related to achieving the charity's charitable purposes.

The guidance makes clear that what is benefit to the public varies depending upon the purposes of the charity, and can be defined by geographical area, and social and economic communities.

It is recognised that the actual benefits given can be restricted by the resources of the organisation, and the key question identified is the range of people who could potentially benefit. Benefit can be limited to quite a small a section of the community if the limitation is rational, reasonable and justifiable in accordance with the charitable purposes.

One area of concern is that the Commission have not yet confirmed that the exception allowing the beneficiaries of an organisation set up to relieve poverty to be defined by reference to family relationship or common employer will still stand under the new legislation. This should be considered in the later consultation on the public benefit of charities for the relief of poverty.

Fee-charging

People on "low incomes" must not be excluded from the opportunity to benefit. This principle may cause an issue for charities charging fees for services. The guidance confirms that charities may charge fees which more than cover the cost of services provided that the charges are reasonable and necessary to carry out the charity's purposes, but an organisation which excludes people on low incomes cannot be said to benefit the public. It is suggested that "low income" would be less than 60% of the average income, or income low enough to enable the recipient to claim income support. These are quite low figures and confirms the commission's view as being that benefits must be available to a full cross-section of the public in terms of their financial status.

Those on low incomes must have a more than nominal chance of benefiting, and a token benefit to one or two individuals or benefit which occurs by chance will not be sufficient to meet the test.

The guidance offers some suggestions on how to allow wider access to facilities that are usually available only through the payment of high fees, including concessions, subsidised or free places, and looking at the availability of other sources of funding to help meet the cost of any fees charged. The question of exactly how much access is required for

people on low incomes will be considered by later guidance.

Private benefit

Any private benefit must either directly contribute towards achieving the charity's purposes and/or be incidental to the carrying out of those purposes. Overall, a charity must provide more public than private benefit. Private benefit is incidental if it is a necessary but secondary consequence of a decision by the trustees, and the decision is directed only at furthering the organisation's charitable purposes.

Testing public benefit

For new organisations looking to register as charities, public benefit will be tested at the point of registration. All charities will have an ongoing requirement to demonstrate public benefit, to be assessed within the current regulatory structure. For charities below the audit threshold (currently £500,000 of gross annual income or assets worth more than £2,000,000) this will be by the inclusion of a public benefit statement in the Trustees' Annual Report, and for those above the threshold by a more full explanation of how the organisation provides public benefit to be included in the Report.

The Commission specifically highlight that charities charging high fees should be able to quantify the benefits they provide as weighted against the value of the tax breaks and other benefits they receive.

The Commission make a commitment to work with charities who are struggling to meet the public benefit requirement and suggest that they are not expecting large numbers of charities to have difficulty in meeting the test, although there are no guarantees for any organisations currently registered as charities that they will be considered to provide public benefit.

The Charity Commission make it clear that they want to hear from anyone who has specific concerns about the ability of any type of charity to meet the public benefit. It is vital that charities get involved and voice their concerns at this stage in the debate and we would encourage as many people as possible to do so.



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